

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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HELEN GESLAK,

Plaintiff,

**ORDER**

06-CV-251

-against-

SUFFOLK COUNTY, SHERIFF ALFRED  
TISCH, in his official capacity, and  
THOMAS MURPHY,

Defendants.

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NICHOLAS G. GARAUFIS, United States District Judge.

By Memorandum and Order dated October 23, 2008, this court dismissed Plaintiff's remaining federal claim, based on Defendants' alleged violation of the consent decree entered in Bellows v. Suffolk County, CV-80-2643 (JBW) ("Bellows") on April 27, 1984. That same day, Defendants moved this court to transfer this case for trial to New York Supreme Court, Suffolk County. Although Plaintiff reserved her right to appeal the court's October 23, 2008 decision, she consented to transfer on October 24, 2008.

The court has discretion to dismiss state claims without prejudice when all the claims over which it had original jurisdiction are dismissed. See 28 U.S.C. § 1367(c)(3); Purgess v. Sharrock, 33 F.3d 134, 138 (2d Cir. 1994). Where, as here, all of plaintiff's federal claims have been dismissed before the commencement of trial, and no other extraordinary circumstances are present, dismissal without prejudice is appropriate. This case is therefore dismissed without prejudice. The parties should note that this case is being dismissed, not transferred. It must be refiled in state court. See 28 U.S.C. § 1367(d) (tolling limitations period for state-law claims during pendency of federal suit and for thirty days thereafter). The Clerk of Court is ordered to close this case.

SO ORDERED.

s/Nicholas G. Garaufis

Dated: Brooklyn, New York  
October 27, 2008

NICHOLAS G. GARAUFIS  
United States District Judge